

# **EXHIBIT C**

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August 21, 2012

**VIA FEDERAL EXPRESS OVERNIGHT MAIL  
AND REGULAR MAIL**

John C. Campbell, Esq.  
Counsel for Wage and Hour  
U.S. Department of Labor  
Office of the Solicitor  
201 Varick Street  
New York, NY 10014

ATTN: SOL:JC

Re: Beehive Beer Distributors/a division of Windmill Distributing, LP  
d/b/a Phoenix Beverages ("Phoenix")

Dear Mr. Campbell:

Pursuant to my letter to you, dated August 8, 2012, this letter provides the information you requested in your letter to me, dated August 1, 2012.

First, before setting forth that information in isolation, I believe it is important to place it in the proper background perspective.

**PHOENIX**

Phoenix is primarily a distributor of beer products which it buys and receives directly from breweries located outside the State of New York.<sup>1</sup> The brewers include Heineken, Miller Brewing, Guinness, Anchor Steam, Diageo (Harp, Smithwick's), Desnoes & Geddes (Red

<sup>1</sup> Phoenix also buys and distributes wine and spirits (collectively "liquor") products which account for about six (6%) percent of its beverage sales. These products also come to Phoenix from outside the State of New York, with the largest Georgi Vodka being distilled in Clifton, New Jersey, and trucked from there to Phoenix.

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Stripe), CCM (Dos Equis, Tecate, Sol), Asahi, Presidente, Brasserie Nationale D'Haiti, S.A., Peroni, Birra Moretti, Pilsner Urquel, Mahou, Scottish and Newcastle, and others. Phoenix has distribution agreements with each of these brewers which appoints Phoenix as its exclusive distributor within certain counties of New York and the five boroughs of New York City.

The beer from the foreign brewers, Heineken, Guinness, Harp, Kilkenny, Red Stripe, Presidente, Smithwicke, Peroni, etc. arrives by ship in bottles, cans and kegs in bubble-wrapped pallets. The pallets are in steel containers which longshoremen remove from the cargo ships by crane and place on flat-bed trucks owned by contract trucking companies. The ships dock for the most part at Port Newark in New Jersey. The contract carriers then transport the beer from New Jersey to Phoenix's warehouse, formerly located on Review Avenue in the Borough of Queens and now located on Pier 7 of the Red Hook Marine Terminal in the Borough of Brooklyn where Phoenix's headquarters personnel and administrative staff are also located.

Title to the beer, including the glass bottles and aluminum can containers, but not the kegs and pallets which remain the property of the brewer, passes from the brewer to Phoenix at Phoenix's Pier 7 warehouse. Phoenix's warehousemen then break-down the beer for placement in its temperature-controlled warehouse, by brand, by case, and by keg. The same procedure applies to the domestic brewers Miller Brewing and Anchor Steam and to the Mexican brewers of Dos Equis, Tecate, and Sol. The domestic beer is shipped by rail across state lines to a rail yard where contract carrier trucking companies pick it up and deliver it to Phoenix's Pier 7 warehouse where title passes. The Mexican beer is transported by truck from Mexico to the United States and then across state lines to Phoenix's Pier 7 warehouse where title passes.

The beer is pre-sold by Phoenix's salespersons. The warehousemen pick the sold brand cases and kegs and load them with their pallets on Phoenix's beer delivery trucks for delivery to Phoenix's retail customers. Teamsters Local 812 represents the delivery drivers and warehousemen under a current collective bargaining agreement ("CBA") with Phoenix and has done so for many years. The drivers deliver the beer to Phoenix's retail customers and at the same time pick up from the customers empty product containers consisting of empty bottles, cans, and kegs. The drivers will also pick up the cardboard boxes, in which the bottles were delivered, and pallets.

The drivers will then transport the empty cans, bottles, kegs, cardboard containers and pallets back to the Red Hook Marine Terminal, but to Pier 11 where Phoenix's owned affiliate R. Mack runs a recycling operation with employees whom Local 812 represents. This operation breaks itself down into four distinct processes, as follows:

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**Glass Bottles**

The bottles are crushed into 30 yard dumpsters. This produces approximately five 30 yard glass filled dumpsters each day. Phoenix sells the crushed glass to EWG's Glass Recycling facility in Jamaica, Queens. EWG picks up the dumpsters five times a day and brings them to its Glass Recycling facility. There, EWG further processes the glass by sifting out the caps and labels and then pulverizing the remaining crushed glass into furnace-ready cullets. EWG sells the glass to Owens-Illinois at Owens-Illinois' mills in North Carolina and Pennsylvania where the glass is melted down and made into new bottles. This same predestined continuous interstate movement of filled glass containers from out-of-state brewers to Phoenix; from Phoenix to its customers and pick-up of the empty containers by Phoenix from its customers for movement to Phoenix's recycling operation for crushing; the sale of the crushed glass by Phoenix and movement to EWG for further processing; and the resale by EWG and movement to Owens-Illinois' out-of-state mills as the bottles' final destination, has gone through this same cycle week after week, year after year, following the enactment of the Bottle Bill.

**Aluminum Cans**

Here again the empty beer can containers are picked up by the delivery drivers from Phoenix's customers at the time of delivery of filled containers and returned by Phoenix's delivery trucks to Phoenix's recycling operation on Pier 11. There, Phoenix employees crush the cans and bale them into bales of 1500 pounds each. In recycling terminology the bales are referred to as UBC (Used Beverage Containers). Phoenix sells the bales to Alcoa's mill in Maryville, Tennessee and, on occasion, to Alcoa's mill in Kentucky. Here again, this continuous interstate movement of filled and empty aluminum cans is predestined at the time of shipping from the out-of-state brewers to Phoenix; the delivery from Phoenix to its customers by beer truck delivery drivers; and, the pick-up by Phoenix drivers from the customers at the time of delivery of empty beer can containers; and the return of the empty cans by Phoenix's delivery trucks to Pier 11 where Phoenix crushes them for movement to Alcoa's out-of-state mills as the cans' final destination.

**Cardboard**

When the empty glass bottles are picked up by the delivery drivers from Phoenix's customers, the bottles normally are in the original case (cardboard box). Here again, the delivery drivers deliver the cardboard boxes to Pier 11 where Phoenix employees bale the cardboard into 1200 pound bales. The bales then get packed into what is known as a 40 foot "ocean container." A contract carrier then trucks the containers to a terminal at Port Newark, New Jersey, where they get shipped to India on the average of one load a week.

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Kegs

The beer delivery drivers deliver the filled kegs from Pier 7 to Phoenix's customers, pick up the empties at the time of delivery, and return the empty kegs to Pier 11 where Phoenix employees arrange for their return to the applicable brewer. Each keg is branded with the brewer's name. Each distribution agreement provides expressly that "all kegs and returnable pallets" will remain the property of the brewer.

In the case of Guinness, the empty kegs are hand-stacked, honeycomb-style (stacked on their sides) 996 kegs to a 45 foot high cube, placed in a steel container, which is brought to Maher Terminal in Newark, New Jersey, and shipped back to Guinness in Dublin, Ireland on APL Shipping Lines' vessels. Phoenix does an average return of kegs to Guinness of three filled containers per week or 2,988 kegs a week.

In the case of Heineken, the empty kegs are placed on pallets which are put into a 40 foot steel ocean container. Each container contains about 480 kegs, together with 60 Heineken pallets. The containers are then trucked to the Maher Terminal or APM Terminal, both in Newark, New Jersey, for shipment back to Holland. Phoenix does an average of two ocean containers per week.

In the case of the Mexican beers and Newcastle, Anchor Steam, Pilsner Urquell, Peroni, Moretti, Red Stripe, Presidente, etc., their empty kegs are packed into in a steel container which is loaded on a contract carrier's trailer on pallets and driven to Kegspediter in Monroe Township, New Jersey. Kegspediter sorts the kegs by destination and then ships them back to the respective out-of-state or out-of-country brewers. Phoenix does about one full steel container a week.

In the case of Miller Brewing, the empty kegs are placed on trailers at Pier 11 and trucked back to Miller's brewery in Eden, North Carolina.

With kegs, there is a predestined continuous circular interstate movement of each brewer's kegs coming to Phoenix's Pier 7 warehouse from out-of-state breweries; the kegs' delivery from Pier 7 to Phoenix's customers by Phoenix's beer delivery trucks driven by Phoenix drivers, and the pick-up of empty kegs by the same drivers and return to Pier 11 where Phoenix's employees prepare the kegs for out-of-state or out-of-country return to each brewer in one continuous flow of kegs from the original point of shipment to the predestined final destination, to wit: the original point of shipment.

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**Pallets, Spacers, and Insulating Blankets**

In the case of Miller Brewing, the returnable pallets, together with the spacers and blankets which go between the pallets in the incoming loads of full containers, are loaded on the trailers of various contract truck carriers and returned to the Miller brewery in Eden, North Carolina.

In the case of Heineken, keg pallets are returned to Heineken along with the empty kegs; trucked to the Maher or APM Terminal in Newark, New Jersey, and shipped back to the Heineken brewery in Holland from where the filled kegs and pallets originated.

In the case of Star Industries (Georgi Vodka), the pallets are put in a steel container and returned to Black Prince Distilling in Clifton, New Jersey from where the product originated. Here again, the product is delivered from out-of-state to Phoenix's warehouse at Pier 7 on pallets; pre-sold; placed on delivery trucks on pallets for delivery to Phoenix's customers; and the pallets returned by the delivery trucks to Pier 11, and there stacked and returned to Star's facility in Clifton, New Jersey, by contract carrier.

In the case of Euro-Pallets, on which Italian Wines arrived at Pier 7 from the various wineries in Italy through Port Newark, New Jersey, the pallets are returned to the Italian wineries through Port Newark once the product has been sold.

**ANSWERS TO SPECIFIC INFORMATION REQUESTED**

1. Long Feng Trucking Company is the Phoenix owned affiliate that operates the beer delivery trucks with Phoenix drivers who deliver all the brewers' products from Phoenix's warehouse on Pier 7 at the Red Hook Marine Terminal to Phoenix's customers and at the time of delivery pick up the customers' empty containers ("empties"), consisting of glass bottles, aluminum cans, and kegs and cardboard and pallets and return them to Phoenix's recycling operation on Pier 11 at the Red Hook Marine Terminal.

EWG buys the crushed glass and picks it up at Pier 11 for transport to its Glass Recycling facility in Jamaica, Queens, where the crushed glass is further processed and resold and transported to Owen-Illinois' mills in North Carolina and Pennsylvania where the glass is melted down and made into new bottles.

2. There are no empty glass bottles, aluminum cans or empty kegs in the warehouse on Pier 7 where all the filled beer containers are located in a temperature controlled facility. Phoenix's owned affiliate Long Feng Trucking, with Phoenix drivers, delivers all the

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filled containers from the warehouse to Phoenix's customers and at the time of delivery picks-up empty bottles, cans and kegs and returns them to Phoenix's recycling operation on Pier 11.

EWG Glass Recycling picks up the crushed glass from Pier 11. Contract carriers pick up the crushed aluminum cans for direct delivery to Alcoa. Contract carriers pick up the empty kegs at Pier 11 and, depending on the brewer, contract carriers deliver the empty kegs of the foreign brewers to the Maher or APM Terminal at Port Newark for shipment back to Holland, Ireland, Italy; in the case of the Mexican beers and domestic beers, other than Miller, the empty kegs are moved from Pier 11 by contract carrier to Kegspediter in Monroe, New Jersey and from there moved back to their out-of-state or country brewer. In the case of Miller, the empty kegs are moved by contract carrier to Miller's brewery in Eden, North Carolina. None of the contract carriers is affiliated with Phoenix or any affiliate of Phoenix.

3. Beer has a shelf life. Depending on the brand and type of container (bottle, can, or keg), most filled containers leave the warehouse (first in, first out) within 15 days after their arrival, but not longer than 30 days.

The waiting time for empty bottle glass' arrival at Pier 11 and retrieval by EWG is one to two days. The waiting time for cardboard retrieval is three to four days. The waiting time for empty kegs retrieval is up to 15 days. The waiting time for empty aluminum cans retrieval is up to 30 days.

4. See above under the headings Glass Bottles, Aluminum Cans, Cardboard, Kegs, Pallets, Spacers and Insulating Blankets.

5. Yes, before the times the empty glass bottles are crushed and retrieved at Pier 11. In the case of crushed glass, Phoenix knows that the retriever will be EWG's Glass Recycling facility in Jamaica, Queens and from there the further processed glass will move to its final destination at Owens Illinois' mills in North Carolina and Pennsylvania. Phoenix knows that predestined route of a shipment before the shipment begins.

6. Yes, before the empty kegs are retrieved at Pier 11. In the case of empty kegs of the foreign imports, Phoenix knows that they will move by truck transport from Pier 11 to either the Maher Terminal or the APM Terminal at Port Newark for shipment by sea back to Holland or Ireland or other foreign breweries. In the case of the Mexican beer and all domestic beer, except Miller, Phoenix knows that the empty kegs will move by truck to Kegspediter in Monroe, New Jersey, and from there returned to their applicable out-of-state or out-of-country breweries. In the case of Miller, Phoenix knows that the empty kegs will be trucked by contract carrier directly from Pier 11 to Miller's brewery in Eden, North Carolina. With kegs, the final destination is always the brewer.

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7. Yes, before the time the empty aluminum cans are crushed and retrieved at Pier 11. Before crushing the aluminum cans into bales, Phoenix knows that the bales will be sent to Alcoa's mill in Maryville, Tennessee and, on occasion, to Alcoa's mill in Kentucky. The out-of-state Alcoa mills are, and have long been the known final destination of the crushed cans.

I believe that answers your questions and more. If you have any questions or wish additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "E. D'Ablemont", written over a circular stamp or seal.

Eugene T. D'Ablemont

ETD:JJ

cc: Angelo Sgro, Director of Human Resources